No. 16-348

In the Supreme Court of the United States

MIDLAND FUNDING, LLC, PETITIONER

v.

ALEIDA JOHNSON

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether a creditor violates the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq.*, by filing an accurate proof of claim in a bankruptcy proceeding for an unextinguished time-barred debt that the creditor knows is judicially unenforceable.

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INTEREST OF THE UNITED STATES

The Fair Debt Collection Practices Act (FDCPA or Act), 15 U.S.C. 1692 *et seq.*, authorizes the Consumer Financial Protection Bureau (CFPB) to "prescribe rules with respect to the collection of debts by debt collectors, as defined in [the FDCPA]." 15 U.S.C. 1692*l*(d). The CFPB, the Federal Trade Commission (FTC), and other federal agencies are responsible for enforcing the Act through administrative proceedings and civil litigation. 15 U.S.C. 1692*l*(a)-(c). In addition, United States Trustees, who are appointed by the Attorney General, are charged with supervising the administration of bankruptcy cases. 28 U.S.C. 581-589a. The United States therefore has a substantial interest in the Court's resolution of the question presented.

STATEMENT

1. a. Congress enacted the FDCPA in 1977 in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. 1692(a). Congress found that "[e]xisting laws * * * are inadequate to protect consumers," and that "the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices." 15 U.S.C. 1692(b) and (c). The Act accordingly subjects a "debt collector"—a defined term that refers to "third-party collectors of consumer debts," *Sheriff* v. *Gillie*, 136 S. Ct. 1594, 1598 (2016)—to various procedural and substantive requirements that are designed to "eliminate abusive debt collection practices" and to "insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged," 15 U.S.C. 1692(e).

The Act prohibits debt collectors from, *inter alia*, "us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt," 15 U.S.C. 1692e, and specifically bars debt collectors from making a "false representation of * * * the character, amount, or legal status of any debt," 15 U.S.C. 1692e(2)(A). The Act further provides that "[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. 1692f. The Act authorizes civil actions against "any debt collector who fails to comply with any provision of [the FDCPA] with respect to any person." 15 U.S.C. 1692k.

b. Petitioner is a debt collector that regularly purchases accounts with overdue balances and attempts to collect the past-due amounts. Pet. App. 3a. "Debt

collection is a $13.7 billion dollar industry," consisting of "approximately 6,000 collection agencies" and affecting approximately "35% of Americans, more than 77 million people." CFPB, *Fair Debt Collection Practices Act: CFPB Annual Report 2016*, at 8 (Mar. 2016).[1] A "substantial part" of the debt-collection business involves "debt buying." *Id.* at 10; see FTC, *Collecting Consumer Debts: The Challenges of Change* 13 (Feb. 2009).[2] Debt buying typically involves bundling debt into portfolios that "generally share common attributes," including "the type of credit issued" and "the elapsed time since the consumer accounts went into default." FTC, *The Structure and Practices of the Debt Buying Industry* 17 (Jan. 2013) (2013 FTC Report).[3] "[D]ebt buyers generally pa[y] less for older debts than for newer ones." *Id.* at 23. One FTC analysis of debt-buying practices from 2006 to 2009 shows that debt buyers paid on average 7.9 cents per dollar for debts less than three years old, 3.1 cents per dollar for debts three to six years old, 2.2 cents per dollar for debts six to 15 years old, and effectively nothing for debts more than 15 years old. *Id.* at 22-24.

c. Every State has adopted a limitations period for suits to collect unpaid debts. See, *e.g.*, Fred O. Williams, *State statutes of limitation for credit card debt*[4] (col-

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[1] http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf.

[2] https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf.

[3] https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

[4] http://www.creditcards.com/credit-card-news/credit-card-state-statute-limitations-1282.php (last updated July 12, 2016).

lecting state laws). Although limitations periods vary, most are between three and six years, and no State has a limitations period longer than 15 years. 2013 FTC Report 42. Expiration of a limitations period typically does not extinguish a debt, but it precludes the creditor from recovering on the debt through the use of judicial processes.[5] *Ibid.* In most States, a consumer must invoke the statute of limitations as an affirmative defense. *Id.* at 45.

2. A debtor commences a voluntary bankruptcy case by filing a petition in bankruptcy court. 11 U.S.C. 301. Individual debtors typically file for relief under Chapter 7 of the Bankruptcy Code (Code), which provides for a liquidation of a debtor's non-exempt assets in exchange for a discharge of pre-petition debts, 11 U.S.C. 701 *et seq.*; or under Chapter 13, which provides for the adjustment of debts of an individual with regular income, 11 U.S.C. 1301 *et seq.* An individual debtor must file with the bankruptcy petition, *inter alia*, a list of his secured and unsecured creditors. 11 U.S.C. 521(a)(1)(A); Fed. R. Bankr. P. 1007(a); U.S. Courts, *Bankruptcy Forms: 106D and 106E/F*. The Code defines "creditor" to mean any "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. 101(10)(A). The term "claim" is defined to include a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. 101(5)(A). This Court has

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[5] In Mississippi and Wisconsin, the expiration of a limitations period for collecting a debt extinguishes the debt. Miss. Code Ann. § 15-1-3 (Supp. 2011); Wis. Stat. Ann. § 893.05 (West 1997).

explained that "[t]he plain meaning of a 'right to payment' is nothing more nor less than an enforceable obligation." *Pennsylvania Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 559 (1990).

A creditor with a claim against a debtor "may file a proof of claim," 11 U.S.C. 501(a), which consists of a "written statement setting forth a creditor's claim," Fed. R. Bankr. P. 3001(a). A "proof of claim executed and filed in accordance with [the Federal Rules of Bankruptcy Procedure] shall constitute prima facie evidence of the validity and amount of the claim," Fed. R. Bankr. P. 3001(f), and the claim is "deemed allowed" unless a party in interest to the bankruptcy proceeding (*e.g.*, the debtor, the trustee, or another creditor) files an objection to the claim, 11 U.S.C. 502(a).

The Code establishes a mechanism for disallowing unenforceable claims. Any party in interest may object to a proof of claim, 11 U.S.C. 502(a), and the trustee in a Chapter 13 bankruptcy "shall," "if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper," 11 U.S.C. 704(a)(5), 1302(b)(1). When a party objects to a claim that "is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured," the bankruptcy court must disallow it. 11 U.S.C. 502(b)(1). The Code further specifies that the bankruptcy estate (which is created when a debtor files a bankruptcy petition) "shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation." 11 U.S.C. 558.

3. a. In March 2014, respondent filed a Chapter 13 bankruptcy petition. Pet. App. 3a. Several months later, petitioner filed a proof of claim in respondent's bankruptcy, seeking repayment of $1879.71. *Ibid.* Petitioner had purchased that debt from Fingerhut Credit Advantage. *Ibid.* The last transaction on that account was in May 2003, and the applicable statute of limitations for a creditor to collect on that debt is six years. *Ibid.*; Ala. Code § 6-2-34 (LexisNexis 2014). Respondent objected to the proof of claim on the ground that it did not contain supporting documentation, J.A. 21, and the bankruptcy court disallowed the claim, see J.A. 10 (Docket entry No. 22).

b. Respondent sued petitioner in the United States District Court for the Southern District of Alabama, alleging that petitioner's filing of a proof of claim for time-barred debt violated the FDCPA because it was deceptive and misleading under Section 1692e and was unfair and unconscionable under Section 1692f. Pet. App. 3a-4a, 19a; see J.A. 23-28. Petitioner moved to dismiss, arguing that the Bankruptcy Code precluded any right to relief the FDCPA otherwise might give respondent, and that respondent's allegations failed in any event to state a claim under the FDCPA. Pet. App. 19a.

The district court granted petitioner's motion to dismiss. Pet. App. 18a-37a. The court acknowledged that, under circuit precedent, the filing of a proof of claim in bankruptcy for a time-barred debt violates the FDCPA. *Id.* at 19a (citing *Crawford* v. *LVNV Funding, LLC*, 758 F.3d 1254, 1256-1257 (11th Cir. 2014), cert. denied, 135 S. Ct. 1844 (2015)). The court held, however, that this prohibition was in irreconcilable tension with the Bankruptcy Code provision

permitting a creditor to file a proof of claim. *Id.* at 20a-37a. The district court concluded that the Code had impliedly repealed the relevant prohibitions in the FDCPA, at least as applied to the filing of a proof of claim for an unextinguished debt that a creditor knows is time-barred. *Id.* at 31a n.17.

c. The court of appeals reversed and remanded. *Id.* at 1a-15a. The court stated "that the Code allows creditors to file proofs of claim that appear on their face to be barred by the statute of limitations." Pet. App. 7a. It held, however, that "when a particular type of creditor—a designated 'debt collector' under the FDCPA—files a knowingly time-barred proof of claim in a debtor's Chapter 13 bankruptcy, that debt collector will be vulnerable to a claim under the FDCPA." *Ibid.*

The court of appeals held that the doctrine of implied repeal had no application in this case because "[t]he FDCPA and the Code are not in irreconcilable conflict." Pet. App. 11a. The court explained that the two statutes, which "provide different protections and reach different actors," "can be reconciled" because "[t]he Code establishes the ability to file a proof of claim, while the FDCPA addresses the later ramifications of filing a claim." *Id.* at 12a (internal citation omitted). The court further explained that, "when a debt collector, as specifically defined by the FDCPA, files a proof of claim for a debt that the debt collector knows to be time-barred, that creditor must still face the consequences imposed by the FDCPA for a 'misleading' or 'unfair' claim." *Id.* at 13a. The court also emphasized that the FDCPA contains a "safe harbor for creditors who may file proofs of claim that are time-barred, if those filings arose from a good-faith

belief resulting from a recording error that the statute of limitations had not in fact run on the claim." *Id.* at 14a n.1 (citing 15 U.S.C. 1692k(c)).

SUMMARY OF ARGUMENT

The FDCPA prohibits a debt collector from filing a proof of claim in a bankruptcy for a debt that the debt collector knows is time-barred.

A. Outside bankruptcy, a plaintiff who knowingly files a time-barred suit is subject to sanctions for litigation misconduct. That is so even though most jurisdictions treat expiration of a statute of limitations as an affirmative defense. In the debt-collection context, a plaintiff will typically be well-positioned to ascertain the facts needed to determine whether a suit is timely. When a debt collector sues or threatens to sue to collect a debt it knows is time-barred, it violates the FDCPA's prohibitions on "misleading" representations and on "unfair" means of debt collection. That understanding accords with the consistent holdings of the federal courts of appeals that have addressed the issue.

B. The same general rules apply in bankruptcy. Contrary to petitioner's argument, the Code does not authorize the filing of a proof of claim for a debt that the creditor knows is unenforceable under applicable law. The Code directs that a claim for a time-barred debt should be disallowed. A creditor that knowingly files such a claim is subject to sanctions under Federal Rule of Bankruptcy Procedure 9011, and potentially to other remedies for bankruptcy abuse. The fact that the Code contains other mechanisms designed to prevent such claims from actually being paid does not alter that conclusion.

In bankruptcy as in other contexts, the FDCPA prohibits a debt collector from invoking judicial processes to collect a debt that the collector knows is time-barred. When a debt collector knows that a claim is time-barred and therefore unenforceable in bankruptcy, the filing of a proof of claim is misleading and unfair, in violation of the FDCPA.

Although the Code allows the trustee and other creditors to object to a proof of claim for a time-barred (or otherwise unenforceable) debt, the volume of bankruptcy litigation makes it inevitable that some such proofs of claim will escape detection. The deliberate filing of proofs of claim for debts known to be time-barred reflects a calculated effort to exploit the imperfections of the Code's disallowance mechanisms, and to prevent the claims-allowance process from functioning as Congress intended. Many such proofs of claim, moreover, are submitted by debt buyers who are able to purchase time-barred debts for pennies on the dollar precisely because those debts are understood to be legally unenforceable. And, contrary to petitioner's argument, the improvident allowance of proofs of claim for time-barred debt often harms the individual debtor as well as other creditors.

C. The Code does not effect an implied repeal of the FDCPA or otherwise preclude application of the Act to petitioner's conduct. To a large extent, petitioner's preclusion and implied-repeal arguments rest on the same mistaken premise—*i.e.*, that the bankruptcy laws authorize creditors to file proofs of claim for debts they know are time-barred—that underlies petitioner's contention that such practices are not "misleading" or "unfair" within the meaning of the FDCPA. Because the Bankruptcy Code and Rules

prohibit all creditors from engaging in that conduct, application of the FDCPA to debt collectors who do so would not create any conflict between the Code and the Act.

Petitioner also suggests that, even if the knowing submission of a proof of claim for a time-barred debt is properly viewed as an abuse of the bankruptcy process, the only remedies for such abuse are those established by the bankruptcy laws themselves. But the FDCPA applies by its plain terms to debt collectors' invocation of judicial processes in the course of their collection efforts, and the courts of appeals that have addressed the question have consistently held that a debt collector violates the Act if it initiates a civil suit to collect a debt it knows is time-barred. Petitioner identifies no sound reason to treat bankruptcy litigation as an exception to the general rule that a debt collector's litigation misconduct may subject it to liability under the FDCPA.

ARGUMENT

THE FDCPA PROHIBITS A DEBT COLLECTOR FROM FILING A PROOF OF CLAIM IN A BANKRUPTCY FOR A DEBT THAT THE DEBT COLLECTOR KNOWS IS TIME-BARRED

Outside bankruptcy, a creditor may be sanctioned for filing a debt-collection suit that the creditor knows is time-barred under state law. If that creditor is an FDCPA "debt collector," filing or threatening to file such a suit would violate the Act's prohibition on misleading representations and unfair practices in connection with the collection of a debt. Within bankruptcy, a creditor who files a proof of claim for a debt that the creditor knows is time-barred is similarly subject to sanctions. And when that creditor is a debt

collector, it violates the FDCPA. Nothing in the Bankruptcy Code suggests that a creditor is entitled to file a proof of claim for a debt that it knows is time-barred, and nothing in the Code precludes the application of the FDCPA to debt collectors who engage in that abusive practice.

A. The FDCPA Prohibits A Debt Collector From Filing Suit Outside Bankruptcy Seeking To Collect A Debt That The Debt Collector Knows Is Time-Barred

1. Outside bankruptcy, a plaintiff who files a suit that the plaintiff knows is time-barred is subject to sanctions for filing a frivolous suit and potentially for acting in bad faith. Federal Rule of Civil Procedure 11 requires attorneys (and unrepresented parties), *inter alia*, to certify when filing in court any "pleading, written motion, or other paper" that, "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," "the claims, defenses, and other legal contentions" in the filing "are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2). On its face, that Rule demands that a plaintiff (through counsel) must undertake a reasonable inquiry into whether any claims she plans to assert in federal court are supported by non-frivolous legal arguments.

Federal courts of appeals agree that a plaintiff violates Rule 11 if information in her hands or easily accessible to her shows that her claim is barred by an "obvious" affirmative defense. See, *e.g.*, *FDIC* v. *Calhoun*, 34 F.3d 1291, 1299 (5th Cir. 1994); *Brubaker* v. *City of Richmond*, 943 F.2d 1363, 1384-1385 (4th Cir. 1991); *White* v. *General Motors Corp.*, 908 F.2d 675,

682 (10th Cir. 1990), cert. denied, 498 U.S. 1069 (1991); see also *Tura* v. *Sherwin-Williams Co.*, 933 F.2d 1010, 1991 WL 88346, at *1 (6th Cir. 1991) (Tbl.) (unpublished); *Steinle* v. *Warren*, 765 F.2d 95, 101 (7th Cir. 1985). A plaintiff need not forbear from filing suit if she has a non-frivolous argument that a generally applicable affirmative defense would not prevail in her case, or if she needs discovery to assess the strength of a potential affirmative defense. *White*, 908 F.3d at 682; see *Calhoun*, 34 F.3d at 1299. But when the plaintiff has all the information necessary to identify a clearly meritorious affirmative defense, she can be sanctioned under Rule 11 if she files suit.[6]

Thus, while a limitations bar is generally treated as an affirmative defense that must be raised by a defendant or waived, Rule 11 requires a plaintiff to consider whether an "obvious" limitations bar applies before filing a complaint. That is so in part because a potential plaintiff typically possesses all the information needed to determine whether a limitations period has expired. Thus, while the defendant typically bears the burden of pleading a statute-of-limitations defense, "[a] pleading requirement for an answer is irrelevant to whether a complaint is well grounded in law." *Brubaker*, 943 F.2d at 1384. To treat the knowing assertion of a time-barred claim as a legitimate litigation practice would be to embrace the notion that, "because of the ignorance of one's adversary, one could advance a claim groundless in law." *Id.* at 1385.

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[6] A potential defendant can waive a statute of limitations defense. If a potential plaintiff and a potential defendant agree out of court to settle a time-barred claim through a court-enforced consent decree, the plaintiff would not violate Rule 11 by simultaneously filing a complaint and a proposed consent decree.

In the context of debt collection, the existence of a valid limitations defense is often easy for a potential plaintiff to ascertain. The owner of a debt knows (or should know) the date of the last transaction on an account (or the date of another event that would trigger the running of the limitations period) and can easily ascertain the length of the applicable statute of limitations. That is particularly so when the plaintiff is a debt buyer, which will have previously ascertained the age (and thus the likely enforceability) of a debt in deciding how high a price to pay. See pp. 2-3, *supra*. The owner of a debt is also well-positioned to assess whether there exists any non-frivolous basis (such as tolling) for avoiding an otherwise-applicable limitations bar. Under the rule applied by every court of appeals that has considered the issue, a plaintiff outside the bankruptcy context engages in sanctionable conduct when it knowingly files a time-barred debt-collection suit.

2. The FDCPA makes it unlawful for a debt collector to "use any false, deceptive, or misleading representations or means in connection with the collection of any debt," including by making a "false representation" about "the character, amount, or legal status of any debt." 15 U.S.C. 1692e(2)(A). The FDCPA also prohibits debt collectors from using "unfair or unconscionable means to collect or attempt to collect a debt." 15 U.S.C. 1692f.

When a debt collector sues or threatens to sue to collect a debt that it knows is time-barred, the debt collector violates the FDCPA. The filing of a suit, or the threat to file a suit, is an implicit representation that the plaintiff has a good-faith basis to believe that the underlying debt is legally enforceable. When a

debt collector knows that the expiration of an applicable limitations period has rendered the debt legally unenforceable, the filing of a suit or the threat to file a suit is a misrepresentation of the "character" or "legal status" of the debt. 15 U.S.C. 1692e(2)(A). Because the FDCPA prohibits representations that are "misleading" as well as statements that are "false," a debt collector's implicit representation that an unenforceable debt is enforceable can violate the FDCPA even if the debt collector does not make an explicit false statement. See *Buchanan* v. *Northland Grp., Inc.*, 776 F.3d 393, 396 (6th Cir. 2015) (Sutton, J.) (explaining that the FDCPA "outlaws more than just falsehoods"). The federal courts that have addressed the issue "have consistently held that a debt collector violates the FDCPA by filing a lawsuit or threatening to file a lawsuit to collect time-barred debt." *In re Dubois*, 834 F.3d 522, 527 (4th Cir. 2016), petition for cert. pending, No. 16-707 (filed Nov. 23, 2016); see *Crawford* v. *LVNV Funding, LLC*, 758 F.3d 1254, 1259 (11th Cir. 2014) (collecting cases), cert. denied, 135 S. Ct. 1844 (2015). As in the Rule 11 context, that is true even though the expiration of a limitations period is an affirmative defense.[7]

When a debt collector knows that a debt is not judicially enforceable, filing or threatening to file a collec-

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[7] The FDCPA contains a safe harbor under which a debt collector can avoid liability "if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. 1692k(c); see generally *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573 (2010). But when a debt collector who knows that a debt is time-barred initiates or threatens to initiate legal action, it violates the Act.

tion suit also violates the FDCPA's prohibition on using unfair means of collecting a debt. 15 U.S.C. 1692f. In most jurisdictions, a consumer's partial payment on a time-barred debt or a promise to resume payments on such a debt will restart the statute of limitations for the entire amount of the debt—a fact that most consumers are unlikely to know. 2013 FTC Report 47; see Pet. Br. 17. When faced with the threat of legal action to enforce a debt that the consumer may not know is judicially unenforceable, a consumer may offer (or be invited to offer) a small partial payment to forestall judicial action, without knowing the legal consequences of that step. A debt collector thus violates the FDCPA's prohibition on using "unfair" practices when it induces or invites a consumer to remit partial payment for an unenforceable debt by giving the consumer the false impression that the debt is legally enforceable. See *McMahon* v. *LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014) (debt collector violated FDCPA by sending letter that offered to "settle" debt because that language gave the misleading impression that the debt was legally enforceable); *Ehsaunddin* v. *Wolpoff & Abramson*, No. 06-cv-708, 2007 WL 543052, at *4 (W.D. Pa. Feb. 16, 2007) ("[T]he fact that the statute of limitations defense could be waived by the unsuspecting consumer against whom a lawsuit is filed appears to present the precise situation that the FDCPA was designed to thwart.").

More generally, statutes of limitations "are not simply technicalities," *Board of Regents of the Univ.* v. *Tomanio*, 446 U.S. 478, 487 (1980), but reflect strong public-policy determinations about the unfairness of subjecting an adversary to suit after a speci-

fied period of time, *United States* v. *Kubrick*, 444 U.S. 111, 117 (1979). See *CTS Corp.* v. *Waldburger*, 134 S. Ct. 2175, 2183 (2014) ("Statutes of limitations 'promote justice by preventing surprises through * * * revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'") (quoting *Order of R.R. Telegraphers* v. *Railway Express Agency, Inc.*, 321 U.S 342, 348-349 (1944)). Those policy concerns have particular salience in the consumer-debt context. After the passage of many years, a consumer may not remember, or may lack the documentation needed to prove, the facts establishing a limitations defense. And "even if the consumer realizes that she can use time as a defense, she will more than likely still give in rather than fight the lawsuit because she must still expend energy and resources and subject herself to the embarrassment of going into court to present the defense." *Kimber* v. *Federal Fin. Corp.*, 668 F. Supp. 1480, 1487 (M.D. Ala. 1987). When a debt collector attempts to evade the effect of a statute of limitations with misleading partial truths, the debt collector violates the FDCPA.[8]

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[8] In its opening brief, petitioner does not address whether a debt collector violates the FDCPA by filing or threating to file suit on a debt that the plaintiff knows is time-barred. Petitioner's amicus DBA International, Inc. (DBA) is a trade association representing agencies that purchase debt on the secondary market. DBA Amicus Br. 1-2. DBA operates a certification program that certifies debt-buying companies holding approximately 80% of the purchased debt nationwide. *Id.* at 2. Petitioner is certified under that program. *Id.* at 5. Certification in the program requires certified companies to conform to the program's standards. *Id.* at 2. One of those standards governs the collection of time-barred debt and directs that a "Certified Company shall not knowingly

B. A Debt Collector Violates The FDCPA When It Files A Proof Of Claim In Bankruptcy For A Debt That It Knows Is Time-Barred

As explained above, outside bankruptcy, an attempt to use legal process to enforce a debt that a creditor knows is time-barred can trigger sanctions under Federal Rule of Civil Procedure 11, and it violates the FDCPA if the plaintiff is a "debt collector." Neither the Bankruptcy Code nor the FDCPA suggests that a different rule should apply in bankruptcy. A creditor that knowingly files a proof of claim for a time-barred debt can be sanctioned under Federal Rule of Bankruptcy Procedure 9011, the bankruptcy counterpart to Rule 11. And, as the court below correctly held, an FDCPA "debt collector" violates the Act if it engages in that conduct.

1. Nothing in the Bankruptcy Code authorizes enforcement of a time-barred claim

Petitioner argues (Br. 18-22) that a creditor has a "right" or "entitle[ment]" to file a proof of claim for a debt that the creditor has no good-faith basis to believe is judicially enforceable. Petitioner relies on the Code's statement that a creditor "may file a proof of claim," 11 U.S.C. 501(a), and on its provision of a mechanism for disallowing claims that cannot be enforced in bankruptcy, 11 U.S.C. 502(b)(1). Recognition of such a "right" would subvert the careful claim-sifting process that is critical to the proper administration of bankruptcy cases.

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bring or imply that it has the ability to bring a lawsuit on a debt that is beyond the applicable statute of limitations, even if state law revives the limitations period when a payment is received after the expiration of the statute." *Id.* at 3 (citation omitted).

a. Section 501 of the Code states that "[a] creditor * * * may file a proof of claim." 11 U.S.C. 501(a). Contrary to petitioner's argument, however, that generalized permission does not speak to the specific question whether a creditor may legitimately file a proof of claim for a debt that it knows is time-barred. "In expounding [on] a statute, [a court] must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law and to its object and policy." *Kelly* v. *Robinson*, 479 U.S. 36, 43 (1986) (quoting *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207, 221 (1986)) (citations omitted). "It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 666 (2007) (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)) (citation omitted).

Section 501(a) is simply one element of the larger claim-sifting process in bankruptcy. As petitioner acknowledges (Br. 19), other Code provisions are designed to ensure that time-barred claims are *not* paid. Section 502(b) of the Code states that a claim "shall" be "allow[ed]" *unless* "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. 502(b)(1). A time-barred claim is "unenforceable against the debtor and property of the debtor[] under * * * applicable law," *ibid.*, and petitioner recognizes (Br. 19) that such a claim should be "disallowed, with the result that it will not be paid by the estate." See 11 U.S.C. 558 (providing that a bank-

ruptcy "estate shall have the benefit of any defense available to the debtor * * * , including statutes of limitations"); *Owens* v. *LVNV Funding, LLC*, 832 F.3d 726, 739 (7th Cir. 2016) (Wood, C.J., dissenting) (explaining that, when the statute of limitations on a debt expires, "the bankruptcy process is one of the avenues of collection that" is "close[d] off for the creditor"), petition for cert. pending, No. 16-315 (filed Aug. 26, 2016). That approach is consistent with the bedrock bankruptcy-law principle that "[p]roperty interests are created and defined by state law," *Butner* v. *United States*, 440 U.S. 48, 55 (1979), which, *inter alia*, typically defines the period of time during which a debt will remain enforceable.

The Code thus reflects Congress's determination that, if a debt is unenforceable outside of bankruptcy, a claim for that debt should be disallowed in bankruptcy as well. Petitioner emphasizes (Br. 17-18) that it has a right to payment on its claim, even if the only available means of collection is to ask the debtor for voluntary repayment. But a proof of claim submitted in a bankruptcy case "is no mere request on moral grounds to turn money over from the bankruptcy estate to the claimant: it is a legal mechanism through which the payment of the claim can be compelled, if the claim is not disallowed by the bankruptcy court." *Owens*, 832 F.3d at 739 (Wood, C.J., dissenting). Submission of a proof of claim therefore is properly understood, not simply as a representation that the debtor is morally obligated to pay a particular sum, but as a representation that the creditor has a good-faith basis to believe that it is entitled to payment under applicable bankruptcy and non-bankruptcy law. Nothing in the Code suggests that a creditor may

legitimately submit a proof of claim that it knows is subject to disallowance under the Code.

Petitioner argues (Br. 18-19) that a claim for a time-barred debt is unenforceable in bankruptcy only when a trustee or other party in interest objects to a proof of claim. As explained above, however, federal courts have consistently held (and petitioner's opening brief does not dispute) that a plaintiff who knowingly files a time-barred suit can be sanctioned for litigation misconduct, even though the statute of limitations is an affirmative defense. See pp. 11-13, *supra*. Nothing in the Code suggests that Congress intended to be more solicitous of time-barred claims in the bankruptcy context. Rather, inside as outside bankruptcy, the propriety of invoking judicial process to enforce a debt depends on whether the creditor has a good-faith basis to believe that the debt is judicially enforceable.

b. When a creditor files a proof of claim in bankruptcy seeking to enforce a debt the creditor knows is time-barred, that filing may trigger sanctions under Federal Rule of Bankruptcy Procedure 9011. Like Federal Rule of Civil Procedure 11, Rule 9011 states that, "[b]y presenting to the court" any "paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, * * * the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Bankr. P. 9011(b)(2). Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in conformance with these rules shall constitute prima

facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). Thus, when a creditor (or its attorney) files a proof of claim, it implicitly represents that the underlying claim is "valid[]," *ibid.*, and enforceable in bankruptcy. Such a certification is not "warranted by existing law," Fed. R. Bankr. P. 9011(b)(2), when the creditor knows that the claim is time-barred because the Code specifically provides that time-barred claims should be disallowed.

Petitioner contends (Br. 18-19) that, by providing a mechanism for objecting to and disallowing time-barred claims, the Code affirmatively "*invites* claims for time-barred debts to be brought into the bankruptcy process" even when the persons who submit them lack any good-faith basis for believing them to be timely. Br. 19 (emphasis added). That is incorrect. In bankruptcy, as in ordinary civil litigation, a limitations bar is an affirmative defense that may be waived if it is not promptly asserted. But Rule 9011 requires in bankruptcy what Rule 11 requires in other civil-litigation contexts: that parties and attorneys forbear from seeking to enforce claims that they know are time-barred. See pp. 11-13, *supra*.

Petitioner also invokes (Br. 5, 12, 20) Federal Rule of Bankruptcy Procedure 3001, which specifies the particular facts that must be included in a proof of claim for a consumer debt, including the date of the account holder's last transaction, the date of the last payment on the account, and the date the account was charged to profit and loss. Fed. R. Bankr. P. 3001(c)(3)(A). Petitioner contends (Br. 20) that, by requiring each proof of claim to include that information, which helps debtors and others to identify and object to time-barred claims, the rules "authorize the

filing of proofs of claim for time-barred debts." That is a non sequitur. The fact that the bankruptcy rules contain other protective measures, designed to reduce the likelihood that time-barred claims will be improvidently allowed, does not suggest that the deliberate filing of such claims is a legitimate bankruptcy practice.

Petitioner relies (Br. 20-21, 28) on a proposed amendment to Rule 3001 that the Advisory Committee on Bankruptcy Rules (Advisory Committee) considered and rejected in 2009. The amendment would have required creditors to affirmatively state in a proof of claim that the claim is timely under the relevant statute of limitations. As petitioner notes (Br. 20-21), the Advisory Committee instead chose to require the disclosure of information that would allow debtors and trustees to more easily ascertain whether a particular claim is time-barred. See Advisory Comm., *Meeting of March 26-27, 2009, San Diego, California, Agenda* 87 (Mar. 26-27, 2009) (*Advisory Committee Agenda*).[9]

In explaining its rejection of the proposed amendment, however, the Advisory Committee emphasized "the need for claimants to properly investigate their claims before filing proofs of claim"; noted that "Rule 9011 imposes an obligation on a claimant to undertake an inquiry reasonable under the circumstances to determine to the best of the claimant's knowledge, information, and belief that a claim is warranted by existing law and the factual contentions have evidentiary support"; and suggested that the proof-of-claim form be amended to require a declaration under pen-

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[9] http://www.uscourts.gov/sites/default/files/fr_import/BK2009-03.pdf.

alty of perjury that the information provided is correct. *Advisory Committee Agenda* 87. Although the Advisory Committee acknowledged that requiring such a declaration would "not address[] the statute of limitations issue," the Committee noted that the declaration "would impress upon the claimant the importance of ensuring the accuracy of the information provided." *Ibid.* When Congress enacted the 1978 Code, the House Report explained that Section 501 "is permissive only" and "permits filing *where some purpose would be served.*" S. Rep. No. 989, 95th Cong., 2d Sess. 61 (1978) (emphasis added); H.R. Rep. No. 595, 95th Cong., 1st Sess. 351 (1977) (same). No valid bankruptcy purpose is served when a creditor invokes judicial process to attempt to collect an unenforceable debt.

2. The FDCPA's bans on misleading representations and unfair practices prohibit debt collectors from filing proofs of claim in bankruptcy on debts they know are time-barred

a. By filing a proof of claim, a debt collector implicitly represents that it has a good-faith basis to believe that the claim is enforceable in bankruptcy. That understanding is reinforced by the Code and Rule provisions that "deem[]" any underlying claim "allowed" absent an objection, 11 U.S.C. 502(a); that declare a proof of claim to be prima facie evidence of the validity of the underlying claim, Fed. R. Bankr. P. 3001(f); and that require a certification that the claim is "warranted by existing law," Fed. R. Bankr. P. 9011(b)(2). When a debt collector knows that a claim is time-barred and therefore unenforceable in bankruptcy, the filing of a proof of claim is misleading and unfair, in violation of the FDCPA. By representing

that a time-barred debt is enforceable in bankruptcy, a debt collector mischaracterizes "the character" and the "legal status" of the debt, in violation of 15 U.S.C. 1692e(2)(A).

Petitioner asserts (Br. 27-28) that its proof of claim was "accurate with regard to the 'legal status' of the debt" because it "contained all the information required by Bankruptcy Rule 3001." But the FDCPA prohibits not only false representations, but also *misleading* representations. The inclusion of both prohibitions in the same provision demonstrates that the statue bans some representations that are factually accurate but are likely to mislead the relevant audience. Such a practice is also "unfair" within the meaning of the FDCPA because a creditor that knowingly files a proof of claim for a time-barred debt seeks money that it can obtain only if the bankruptcy system fails to operate as Congress intended. A debt collector that attempts to game the system by hoping that the debtor and trustee will fail to notice or assert an ironclad affirmative defense (and by requiring a debtor or trustee to expend energy and resources to identify and assert a limitations defense that the creditor is already aware of) engages in the type of abusive conduct the FDCPA is intended to prohibit.

b. Petitioner argues (Br. 29) that, unlike the typical debt-collection communication, which is directed to an individual consumer debtor, its proof of claim was directed to respondent's attorney and the Chapter 13 trustee. While recognizing (*ibid.*) that courts generally analyze whether particular conduct violates the FDCPA's prohibition on misleading representations by asking whether an unsophisticated consumer would be misled, petitioner urges this Court to adopt a dif-

ferent "competent attorney" standard with respect to bankruptcy proofs of claim. That argument ignores the fact that many bankruptcy filers are unrepresented. But in any event, this Court need not decide whether an unsophisticated-consumer or competent-attorney standard applies to a debt collector's proof of claim. Cf. *Sheriff* v. *Gillie*, 136 S. Ct. 1594, 1602 n.6 (2016) (declining to decide whose perspective is relevant in assessing whether a representation is misleading). Filing a proof of claim constitutes an implicit representation that there is a good-faith basis to believe the claim is enforceable in bankruptcy and "is warranted by existing law." Fed. R. Bankr. P. 9011(b)(2). A debt collector's submission of a proof of claim for a debt that the creditor knows is time-barred therefore is misleading under either an unsophisticated-consumer or competent-attorney standard.

c. Petitioner argues (Br. 31-34) that knowingly filing a proof of claim for a time-barred debt is not "unfair" under the FDCPA because the Code both establishes mechanisms to oppose untimely claims and affords various other protections to debtors in bankruptcy. Petitioner also suggests (Br. 37-38) that, at least in a case (like this one) where the debtor or trustee has successfully objected to the underlying proof of claim, any FDCPA suit represents an inappropriate attempt by "plaintiffs' lawyers" to profit from "technical violations" of the Act. Those arguments lack merit.

The Code instructs that, "if a purpose would be served," the trustee should "examine proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. 704(a)(5); see Pet. Br. 29-30. Numerous courts have recognized, however, that trustees cannot realistically be expected to identify every time-

barred (or otherwise unenforceable) claim filed in every bankruptcy. See, *e.g.*, *In re Edwards*, 539 B.R. 360, 365 (Bankr. N.D. Ill. 2015) ("In districts like this with a large number of chapter 13 cases, * * * trustees typically object to claims only if they are filed after the claims bar date or improperly seek priority treatment.") (footnote omitted); see also *Owens*, 832 F.3d at 740 (Wood, C.J., dissenting); *In re Feggins*, 540 B.R. 895, 901 n.5 (Bankr. M.D. Ala. 2015), aff'd, *LVNV Funding, LLC* v. *Feggins*, No. 15-cv-893, 2016 WL 4582061 (M.D. Ala. Sept. 2, 2016). And even apart from the costs imposed when particular time-barred claims are improvidently allowed, the large-scale submission of such claims (see pp. 26-27, *infra*) diverts trustee resources from other tasks and thus hinders the administration of the bankruptcy system. A trustee's separate obligation to object to invalid claims therefore does not negate a creditor's duty to refrain from filing claims it knows are legally unenforceable.

That is particularly so because the knowing submission of a proof of claim for a time-barred debt represents a deliberate effort to exploit the imperfections of the alternative safeguards that petitioner identifies. A creditor that submits such a claim can gain a practical advantage only if the claims-allowance process fails to operate as Congress intended. A creditor that files a claim for a time-barred debt thus is "exploiting a weakness in the bankruptcy system and preying on potential error to collect debts where it should not." *In re Dubois*, 834 F.3d at 535 (Diaz, J., dissenting).

Such time-barred claims are often submitted, moreover, by companies whose business model depends on the legal unenforceability of the relevant

debts. The "business of buying stale claims and filing proofs of claim in bankruptcy to collect on them * * * appears to be a big and prosperous business." *In re Edwards*, 539 B.R. at 365. Debt buyers are able to purchase time-barred debt for pennies on the dollar precisely because all parties to that transaction know that the debt is unenforceable. And, given the low cost of acquiring such debt, the large-scale submission of proofs of claim in bankruptcy may be profitable even if most such claims are objected to and disallowed. Each knowing submission of a time-barred claim should be recognized for what it is: a deliberate effort to collect a legally unenforceable debt through an implicit misrepresentation that the debt remains enforceable. Such submissions are much more than "technical violations" (Pet. Br. 37) of the FDCPA, even in instances where a timely objection prevents the creditor from achieving its illicit aim.[10]

Petitioner also asserts that filing a proof of claim for a time-barred debt does not implicate the FDCPA's consumer-protection purposes because allowance of such a claim "will ordinarily have no effect on the debtor" (Br. 35), but instead "primarily affects the interests of other creditors" (Br. 36).[11] In

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[10] The government recently sued one of petitioner's amici, Resurgent Capital Services, L.P. (Resurgent), for abuse of process under 11 U.S.C. 105(a). The complaint alleges that, over a six-year period, Resurgent filed more than 142,000 proofs of claim for debts, some dating back to the 1980s, that it knew were time-barred and on which it collected more than $12 million. *In re Davis*, No. 14-20400-DRD13, Adv. No. 16-2018, at ¶¶ 36-37, 41 (Bankr. W.D. Mo.); see also *In re Freeman-Clay*, No. 14-41871-DRD13, Adv. No. 16-4102 (Bankr. W.D. Mo.).

[11] Amicus United States Chamber of Commerce contends (Br. 23) that the FDCPA does not apply to proofs of claim because a

many circumstances, however, allowance of a time-barred claim can harm a Chapter 13 debtor. If a Chapter 13 plan provides for 100% recovery for unsecured creditors, payment of a time-barred claim will take money directly from the debtor. If (as occurs in many Chapter 13 cases) a case is dismissed before completion of the plan, some amount of money from the portion of the debtor's disposable income that is dedicated to payments under the plan will have gone to pay the time-barred claim rather than to pay valid claims. When the bankruptcy fails, the debtor will consequently owe more on the valid claims than he would have if the invalid claim had not been included in the bankruptcy.

Even if a plan succeeds, moreover, payments made to time-barred creditors will reduce payments to any unsecured creditors whose claims are not discharged. In this case, for example, a majority of respondent's unsecured debt was more than $50,000 in student-loan obligations. Bankr. Ct. Doc. 1, at 17-18 (Dec. 7, 2012). If petitioner's claim had been allowed, any payments made on that claim would have reduced the amount of student-loan debt respondent repaid, thereby increasing the post-bankruptcy principal and interest respondent would still owe on that nondischarged debt after bankruptcy. See 11 U.S.C. 523(a)(8), 1328(a)(2). Petitioner is therefore wrong in arguing (Br. 36 n.7)

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proof of claim is an attempt to collect a debt from the bankruptcy estate and (in the amicus's view) the FDCPA "regulates attempts to collect financial obligations only from natural persons." That is incorrect. The relevant FDCPA prohibitions are not limited to communications made directly to consumers. Rather, they apply to "any * * * representation or means in connection with the collection of any debt," 15 U.S.C. 1692e, and to any "means to collect or attempt to collect any debt," 15 U.S.C. 1692f.

that respondent would not have suffered any harm if petitioner's claim had been allowed.

Equally meritless is petitioner's suggestion (Br. 31-32) that the availability of sanctions under Rule 9011 is sufficient to deter the type of behavior the FDCPA is designed to prohibit. Like its civil counterpart, Rule 9011 contains a safe haven that prohibits the imposition of sanctions if an offending paper is "withdrawn" within 21 days after a motion for sanctions is filed. Fed. R. Bankr. P. 9011(c)(1). A debt collector therefore can adopt a business model of filing multiple proofs of claim for time-barred debts, anticipating that some will be improvidently allowed and intending to withdraw the rest as soon as objections are raised, without incurring any risk of sanctions under Rule 9011.

In sum, filing a proof of claim for a debt that a debt collector knows is time-barred serves no valid bankruptcy purpose, undermines the claims-sifting process established by Congress, and violates the FDCPA. As one court of appeals judge has explained:

> At best, a debt collector who files such a claim wastes the trustee's time. At worst, the debt collector catches the trustee asleep at the switch and collects on an invalid claim to the detriment of other creditors and, in many cases, the debtor. In either case, the debt collector misleadingly represents to the debtor that it is entitled to collect through bankruptcy when it is not.

In re Dubois, 834 F.3d at 534 (Diaz, J., dissenting).

3. The Bankruptcy Code does not preclude application of the FDCPA to bankruptcy proofs of claim

Petitioner argues (Br. 38) that, "[e]ven if the FDCPA could be read to prohibit the filing of a proof of claim for an unextinguished time-barred debt, the Bankruptcy Code would preclude that application of the FDCPA." See Br. 38-45. Petitioner contends (Br. 43-45) in the same vein that Congress's enactment of the Code in 1978 effected an implied repeal of any such prohibition that the FDCPA might previously have imposed. Those arguments lack merit.

a. To a large extent, petitioner's preclusion and implied-repeal arguments rest on the same mistaken premise that underlies petitioner's contention that the knowing submission of a proof of claim for a time-barred debt is not "misleading" or "unfair" within the meaning of the FDCPA. Thus, petitioner contends that, "[i]f interpreted to prohibit filing a proof of claim for an unextinguished time-barred debt, the FDCPA would patently conflict with the Code, *which expressly authorizes that very practice*." Br. 40 (emphasis added). As explained above, the italicized language reflects a misunderstanding of the Bankruptcy Code and Rules, which prohibit all creditors from filing proofs of claim for debts they know are time-barred. See pp. 17-23, *supra*. Treating the conduct alleged in this case as an FDCPA violation therefore would not penalize petitioner for actions that the Code authorizes or encourages, or otherwise create any conflict between the Act and the Code.

b. Petitioner also suggests (Br. 40) that, even if the knowing submission of a proof of claim for a time-barred debt is properly viewed as an abuse of the bankruptcy process, the only remedies for such abuse

are those established by the bankruptcy laws themselves. Thus, petitioner argues (*ibid.*) that treating the conduct alleged here as an FDCPA violation would "substitute the FDCPA's broader remedies in place of the Code's own carefully calibrated ones and supplant the authority of bankruptcy courts to police conduct occurring within a bankruptcy proceeding." Relying on *Kokoszka* v. *Belford*, 417 U.S. 642, 651 (1974), petitioner contends that the FDCPA should not be construed to apply to the actions a debt collector takes in a bankruptcy case because "[n]othing in the text or legislative history reflects any intent to interfere with the 'delicate balance' of the bankruptcy system." Br. 41 (quoting *Kokoszka*, 417 U.S. at 651). Those arguments are misconceived.

The FDCPA prohibitions at issue here apply only to creditors that fall within the Act's definition of "debt collector." Those prohibitions govern, *inter alia*, the "representation[s]" that debt collectors may make "in connection with the collection of any debt," 15 U.S.C. 1692e, and the "means" they may use "to collect or attempt to collect any debt," 15 U.S.C. 1692f. By its plain terms, that language encompasses efforts by FDCPA debt collectors to invoke judicial processes in the course of their debt-collection efforts. See *Heintz* v. *Jenkins*, 514 U.S. 291, 294 (1995) ("To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings.") (quoting *Black's Law Dictionary* 263 (6th ed. 1990)).

Consistent with that understanding, the courts of appeals that have addressed the question have consistently held that a debt collector violates the FDCPA if it initiates a civil suit to collect a debt it

knows is time-barred. See p. 14, *supra*. That is so even though additional remedies (such as Rule 11 sanctions) for the same litigation misconduct may be available in the underlying debt-collection suit. And petitioner's opening brief does not dispute the general proposition that the FDCPA can apply to litigation-related misconduct committed by debt collectors.

Petitioner identifies no sound reason to treat bankruptcy litigation as an exception to that general rule. When a debt collector files a proof of claim in bankruptcy, it attempts "to obtain payment" of a debt by "legal proceedings." *Heintz*, 514 U.S. at 294. Petitioner's argument would logically imply that, even if a debt collector's proof of claim affirmatively misstates the facts bearing on a potential limitations (or other) defense, the FDCPA should be displaced in deference to the purportedly exclusive remedies provided by the Code and Bankruptcy Rules. Nothing in the Code suggests that Congress intended such an exception to the rules that generally govern debt collectors' conduct.

The effect of the court of appeals' decision in this case is simply to make additional remedies available when a particular type of creditor (an FDCPA debt collector) commits a type of bankruptcy abuse (the filing of a proof of claim for a debt the creditor knows is time-barred) that is forbidden to all creditors. Imposition of such additional remedies on a class of creditors that the FDCPA singles out for targeted regulation is fully consistent with the text and purposes of both the Act and the Code. And "[w]hen two statutes complement each other, it would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the

operation of the other." *POM Wonderful LLC* v. *Coca-Cola Co.*, 134 S. Ct. 2228, 2238 (2014).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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DECEMBER 2016